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May 16, 2011

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

229513

Re: Docket No. NOR-42129; American Chemistry Council; The Chlorine Institute, Inc., The Fertilizer Institute, and PPG Industries, Inc. v. Alabama Gulf Coast Railway, and RailAmerica., Inc.

Dear Ms. Brown:

Enclosed for filing please find Complainants; Reply to the Motion to Dismiss to be filed in the above-captioned proceeding.

Sincerely,

/s/ Paul M. Donovan
Paul M. Donovan
Counsel for Complainants

BEFORE THE
SURFACE TRANSPORTATION BOARD

American Chemistry Council, The Chlorine Institute, Inc., The Fertilizer Institute, and PPG Industries, Inc., Complainants, v. Alabama Gulf Coast Railway, and RailAmerica, Inc. Defendants.	)	Docket No. NOR-42129

REPLY TO MOTION TO DISMISS

COME NOW Complainants, American Chemistry Council ("ACC"), the Chlorine Institute, Inc. ("CI"), The Fertilizer Institute ("TFI"), and PPG Industries, Inc. ("PPG"), and file this Reply to the Motion to Dismiss ("Motion") of Defendants Alabama Gulf Coast Railway ("AGR") and RailAmerica, Inc. ("RailAmerica"). Complainants have requested that the Surface Transportation Board ("STB" or "Board") (1) determine that the TIH/PIH Standard Operating Practice ("SOP") that is being, and has been, adopted and implemented by Defendant RailAmerica and various of its railroad operating subsidiaries, including Defendant AGR, is an unreasonable practice in violation of 49 U.S.C. § 10702; (2) determine that the RailAmerica SOP is contrary to the common carrier obligations of its various operating subsidiaries, including AGR, in violation of 49 U.S.C. § 11101; and (3) enjoin the implementation of the SOP pursuant to 49 U.S.C. § 721 (b)(4) pending final resolution of this Complaint.

Preliminary Statement

While arguing that it is not a rail carrier subject to the Board's jurisdiction, Defendant RailAmerica continues to manage the day to day activities of its operating subsidiaries, issue tariffs in its own name that it causes its subsidiaries uniformly to adopt, and most recently has caused three additional subsidiaries[1] to issue virtually identical tariffs, effective the same day, based on RailAmerica's SOP that is the subject of the Complaint. This coordinated activity taken at the direction and instruction of RailAmerica is sufficient in its own right to demonstrate the lack of merit of the Motion to Dismiss.

Defendants' Motion to Dismiss is grounded upon three fundamentally unsound propositions: (1) that RailAmerica is not a rail carrier within the meaning of the Interstate Commerce Commission Termination Act ("ICCTA"); (2) that by altering a specific AGR tariff and partially limiting the application of RailAmerica's General Tariff 14 days after the Complaint filed herein and 10 days after Complainants' Motion for Injunctive Relief, Defendants have eliminated any controversy among the parties to this proceeding; and (3) that the SOP created and implemented by RailAmerica is not a tariff and is therefore beyond the jurisdiction of the Board to review. Each of these propositions is based on factual assertions that cannot be sustained at this stage of the proceeding based entirely on the Motion to Dismiss. They are therefore premature, as is the Motion itself. In addition, based on the publicly available information regarding RailAmerica and its operations, the propositions are presumptively factually unsound and cannot serve as the basis for granting the Motion.

[1] These include the Indiana and Ohio Railway (IORY), the Michigan Shore Railroad (MSR) and the Point Comfort and Northern Railway Company (PCN).

RailAmerica is indeed a person that provides common carrier rail service both in its own right and through the auspices of its 36 operating U.S. subsidiaries. It publishes a tariff with many provisions, rules, regulations and charges that are uniformly adopted by its subsidiaries and directs the operations and policy decisions of its subsidiaries. This is no simple holding company. It is an operating company that directs policy, sets rates and directs the operations of it subsidiaries. Specifically with respect to this case, it was and is RailAmerica that established and implemented the SOP and the AGR tariff provisions that are the subject matter of this proceeding. In any event, the question as to whether RailAmerica is a rail carrier is a matter of fact, not of pleading, and can be addressed only after the development of a full record.

As will be discussed more fully below, AGR issued a special TIH tariff, AGR-T-0900, effective March 11, 2011, that essentially adopted the new special train requirements and charges set forth in the RailAmerica SOP that RailAmerica had been threatening to impose for some months. The new tariff provisions referenced the RailAmerica tariff 1000 series and 7006 and 6006 series.[2]

When Complainants responded by instituting this action, AGR made some modest alterations to the tariff AGR-T-0900, now calling it AGR-T-0900-1. These changes included removing any reference to the RailAmerica General Tariff TIH/PIH Policy,[3] although AGR still subscribes to the remainder of the RailAmerica General Tariff for many of its charges and rules of service. Curiously, the three additional subsidiaries adopting tariff provisions virtually identical to the new AGR-T-0900-1 have not eliminated the RailAmerica TIH/PIH Policy that Defendants note AGR did eliminate.

[2] This tariff, AGR-T-0900, was attached to the Complaint in the form that it then existed.
[3] While removing the RailAmerica TIH/PIH Policy from the AGR-T-0900-1, that Policy remains in all 35 of the remaining RailAmerica U.S. operating subsidiaries' tariffs.

Finally, this case involves the question of whether the SOP, together with its various requirements and charges, as set forth and implemented through whatever tariff or device, constitutes an unreasonable practice. The lawfulness of the SOP does not depend upon the method of its implementation, but rather on the fact that it is being implemented and enforced. As the driving force behind the SOP, with complete control over its design and application, RailAmerica is the real Defendant in this case and AGR, and now the additional subsidiaries, together with however many additional subsidiaries may be instructed to publish the SOP provisions in tariff form, are merely its implementing tools.

Argument

RailAmerica Is a Rail Carrier subject to the Board's Jurisdiction

RailAmerica had 36 U.S. operating subsidiaries as of the filing of the Complaint herein.[4] Whether one goes to the RailAmerica website or to the websites of the individual operating subsidiaries, one thing is abundantly clear: the tariff provisions for each of the operating subsidiaries is, in large part, an adoption of the RailAmerica General Tariff 1000. The RailAmerica Tariff sets rules, requirements and conditions of carriage and sets prices for various services. There is no question that RailAmerica is offering through its Tariff, and providing through its controlled and directed subsidiaries, common carrier rail services to the general public, for compensation. (49 U.S.C. § 10102(5)

RailAmerica's post Complaint conduct in this case is a clear reflection of not only the Board's likely jurisdiction over RailAmerica, but also the need to exercise its jurisdiction by enjoining the actions of RailAmerica and not merely the actions of

[4] That number has expanded to 39 as a result of the Board's Decision in F.D. 35486 issued April 22, 2011.

individual subsidiaries. As noted above, after the Complaint was filed, RailAmerica caused AGR to alter its Tariff AGR-T-0900 in some relatively minor respects on April 29, 2011. Defendants now allege that this altered Tariff is not the Tariff complained of and the Complaint should be dismissed. On May 6, 2011, the day after filing the Motion to Dismiss, RailAmerica caused three additional tariffs to be filed by three additional subsidiaries that are virtually identical to the AGR-T-0900-1 Tariff. One assumes that other subsidiaries may follow suit at a time and in a manner dictated by RailAmerica.

This is not the first time that RailAmerica has sought to impose unlawful requirements on the shippers and receivers of TIH materials. On or about January 15, 2009, RailAmerica issued a new "General Tariff" which was to be adopted by its subsidiary railroads. This General Tariff provided in relevant part: "The shipper of any toxic inhalation or poison inhalation hazardous commodity shipped via the Subscribing Carrier shall indemnify the Subscribing Carrier and hold the Subscribing Carrier harmless for any and all loss, liability or cost whatsoever that the Subscribing Carrier may incur or be held responsible for, to the extent that such liability is due to shipper's transportation of such commodity, except to the extent that the Subscribing Carrier is grossly or willfully negligent." Inasmuch as this provision was clearly contrary to public policy and state negligence and indemnification law in the State of California, the American Chemistry Council, the Chlorine Institute and Olin Corporation filed suit against RailAmerica and its California subsidiary, California Northern Railroad, in the United States District Court for the Eastern District of California.[5] That case was dismissed as moot when RailAmerica changed its General Tariff to eliminate the above-

[5] Federal Court jurisdiction in that litigation was based on diversity of citizenship not on a federal question. The public policy involved was a violation of state negligence and indemnification law and not premised on an allegation that the actions therein violated the ICCTA or any other federal statute.

quoted language that had been the basis of the suit.[6] Aside from the subject matter of the respective tariffs, indemnification(which is not subject to the Board's jurisdiction) and special train service (which is subject to the Board's jurisdiction), the only distinction between the controlling actions of RailAmerica in the 2009 indemnification tariff and the 2011 SOP is that, in 2009, the Tariff was published directly by RailAmerica and subscribed to by its subsidiaries, and today the SOP is created by RailAmerica and the specific subsidiaries have published tariffs adopting its terms. This is a distinction without a difference.

Even if RailAmerica were to cancel its General Tariff 1000 and cause its operating subsidiaries to adopt the provisions of that Tariff in their respective individual tariffs, RailAmerica would still be a rail carrier within the meaning of the ICCTA. In the leading case of *United States v. Bestfoods,* 524 U.S. 51 (1998), the Supreme Court unanimously held that a federal statute—the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601 *et seq.*—prevents individuals from hiding behind the corporate shield when they themselves actually participate in the wrongful conduct prohibited by the Act. 524 U.S. at 65-66.

In *Green v. Long Island Railroad Company,* 280 F.3d 224, (2d Cir. 2002), the Second Circuit relied upon the *Bestfoods* decision in holding that the New York Metropolitan Transportation Authority ("MTA") was a common carrier railroad within the meaning of the Federal Railroad Employers' Liability Act, 45 U.S.C. § 51 *et seq.,* even though the Long Island Railroad and not the MTA actually operated the trains that moved passengers on the rail system. In *Green,* as in *Bestfoods,* the Court relied not on the parent/subsidiary relationship between the parties, but on the level of involvement of

[6] A copy of the Complaint in that litigation is attached hereto as Exhibit A.

the parent in operations of the admittedly common carrier subsidiary. There, as here, the parent was so integrally involved in the operations of the rail carrier and in the establishment of the policies and practices of those rail services as to make the parent a common carrier by rail in its own right.

While the final determination of RailAmerica's status as a rail carrier might require the development of a more complete record, the actions of RailAmerica in causing its subsidiaries to adopt and attempt to enforce the directives set forth in the RailAmerica SOP, which was admittedly created by RailAmerica personnel, are so direct and controlling as to indicate that RailAmerica is a rail carrier within the meaning of the ICCTA. Clearly, it is the actions of RailAmerica that are causing the harm and damages set forth in the Complaint, and it is RailAmerica's conduct that must be enjoined if that harm and those damages are to be prevented.

The Complaint Does Not Seek to Enjoin a Particular Tariff but an Unreasonable Practice

Defendants' remaining arguments in their Motion to Dismiss rely upon a mistaken assumption that the relief sought is the enjoining of a particular AGR tariff provision and that the change of that particular tariff provision somehow renders the case moot or removes any controversy among the Parties. That assumption is both factually and legally unsound.

Even a cursory reading of the Complaint reveals that it is not the actions of AGR alone, or a tariff item or items issued by AGR alone, that are the subject of this proceeding. The Complaint's prayer for relief is that the Board "issue an order under 49 U.S.C. § 721 (b)(4) prohibiting RailAmerica and any RailAmerica subsidiary railroad, including AGR, from imposing the Standard Operating Practice and/or special train

service as described herein until such time as such Practices and special train service have been justified by persuasive and compelling evidence" and that the Board "after due hearing and investigation find that the RailAmerica Standard Operating Practice and special train service violate the common carrier obligation set forth at 49 U.S.C. § 11101...." Plainly, the Complaint is not mooted because AGR has modified a specific tariff provision while keeping the SOP and special train service requirements in place, and the controversy among the Parties remains. This is particularly true where, as noted above, RailAmerica has caused three additional subsidiary railroads to implement the SOP and special train service since the Complaint was filed and since RailAmerica has answered the Complaint.

Conclusion

In view of the foregoing, the Motion to Dismiss should be denied, and the requested injunctive relief should be granted.

Respectfully submitted,

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May 16, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for AGR and RailAmerica electronically.

/s/ Paul M. Donovan
May 16, 2011

EXHIBIT A

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

American Chemistry Council, Chlorine Institute, Inc., and Olin Corporation, Plaintiffs, v. California Northern Railroad and RailAmerica, Inc., Defendants.	Civil Action No. 209-CV-01410-GEB-JFM

PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

1. Defendant California Northern Railroad ("CFNR") through its actions and those of its parent company Defendant RailAmerica, Inc. ("Rail America") has published a tariff effective March 1, 2009, that requires that any party causing chlorine to be shipped on the CFNR indemnify the CFNR for CFNR's own negligence in the event of any release of chlorine during its transportation by CNFR.

2. Plaintiff Olin Corporation (on behalf of itself and/or its wholly owned subsidiaries "Olin") is a member of Plaintiffs the American Chemistry Council ("ACC") and the Chlorine Institute, Inc. ("Chlorine Institute"). Olin produces chlorine and other chlor-alkali products at various locations throughout the U.S. and Canada including Henderson, Nevada, and both repackages chlorine from rail tank cars to 150 pound cylinders and one ton containers, and uses chlorine and sodium hydroxide in the production of sodium hypochlorite at its facility located at Tracy, California.

3. Defendant, CFNR is a railroad with its principal place of business in Woodland, California and operates over 263 miles of track in California. CFNR transfers rail cars and thereby interchanges rail traffic, including traffic of Olin originating in Henderson, Nevada, with the Union Pacific Railroad at three locations within the State of California, and delivers rail freight traffic, including chlorine, to Olin's facility at Tracy, California.

4. Defendant RailAmerica, Inc. ("RailAmerica") owns the CFNR and is responsible for its corporate policies and actions.

5. Effective March 1, 2009, CFNR, at the direction and instruction of its parent company RailAmerica, adopted a new General Tariff that applies to the rail

shipment of products, including chlorine, over its tracks. That General Tariff includes an Item 1010 – Liability and Indemnification Policy (Attached hereto as Exhibit A). Under this new Item, Olin, as the shipper of chlorine, is required, as a condition of carriage, to indemnify CFNR and hold CFNR harmless for any loss, liability or cost whatsoever that the CFNR may incur as a result of the CFNR's negligence in handling the chlorine shipment resulting in the release of chlorine. This new Policy applies to all 42 of the RailAmerica short line and regional railroads throughout the United States and Canada. Since the CFNR is the only rail carrier serving the Olin location at Tracy, California, and since chlorine, for both economic and safety reasons, must move to this location via rail, the result of the new Policy is to impose the undue burden on Olin by requiring Olin to choose between shutting down its chlorine repackaging and sodium hypochlorite production facility or acceding to the new Item 1010 – Liability and Indemnification Policy.

6. Plaintiffs respectfully request that this Court issue a declaratory judgment that Defendants' actions are contrary to both federal and California public policy and the applicable California law, and enjoin the Defendants from requiring adherence to the Liability and Indemnification Policy as a condition of carriage.

PARTIES

7. Plaintiff ACC is an industry association that represents America's leading chemical producers. ACC is a New York not-for-profit corporation with offices located at 1300 Wilson Blvd., Arlington, Virginia 22209. ACC's 130 members account for approximately 85 percent of U.S. capacity for the production of basic industrial chemicals and manufacture a wide array of products, including products designated Toxic

Inhalation Hazard ("TIH") or Poison Inhalation Hazard ("PIH"), collectively "TIH/PIH" including chlorine. These products, including those designated TIH/PIH, are offered for shipment by railroads including the CFNR. ACC and its members have a long-standing commitment to the safe and secure transportation of hazardous materials including TIH/PIH materials.

8. Plaintiff the Chlorine Institute is a 220 member, not-for-profit trade association of chlor-alkali producers, packagers, distributors, users and suppliers. The Institute is a Connecticut Corporation with offices located at 1300 Wilson Blvd., Arlington, Virginia 22209. The Chlorine Institute's mission is the promotion of safety and protection of human health and the environment in the manufacture, distribution and use of chlorine, sodium hydroxide, potassium hydroxide and sodium hypochlorite, plus the distribution and use of hydrogen chloride. The Chlorine Institute's North American producer members account for more than 95 percent of the total chlorine production capacity of the U.S., Canada and Mexico.

9. Olin is a corporation organized and existing under the laws of the State of Virginia with its principal place of business located in Clayton, Missouri. Olin is a member of ACC and of the Chlorine Institute. Olin produces chlorine and other chlor-alkali products at various locations throughout the U.S. and Canada including Henderson, Nevada. Olin ships chlorine by rail from its chlorine production facility at Henderson, Nevada to its repackaging and sodium hypochlorite production facility at Tracy, California over the lines of the Union Pacific Railroad ("UP") and the CFNR. At Olin's Tracy, California facility, chlorine is both repackaged from rail tank cars into 150 pound cylinders and one ton containers, and combined with sodium hydroxide to produce

sodium hypochlorite. Both the repackaged chlorine and the sodium hypochlorite are used to purify water for more than 160 large and small municipalities in the Northern California area. Olin ships the chlorine to be repackaged and necessary to make sodium hypochlorite from Henderson, Nevada to Tracy, California over the lines of the Union Pacific Railroad and the CFNR.

10. Defendant CFNR is a railroad corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Woodland, California. CFNR operates over 263 miles of track in California. CFNR interchanges rail traffic, including traffic of Olin originating in Henderson, Nevada, with the Union Pacific Railroad at three locations within the State of California, and delivers rail freight traffic, including chlorine, to Olin's facility at Tracy, California.

11. Defendant RailAmerica is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256. RailAmerica owns 42 short line and regional railroads, including CFNR, throughout 26 states and three Canadian provinces with over 8,000 miles of track. RailAmerica owns the CFNR and is responsible for its corporate policies and actions.

JURISDICTION AND VENUE

12. Plaintiffs bring this action pursuant to 28 U.S.C. § 2201 seeking a declaratory judgment, and pursuant to 28 U.S.C. § 2202 seeking injunctive relief. There is a present and actual controversy among and between the parties.

13. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) (1) inasmuch as the amount in controversy is in excess of $75,000 and all Plaintiffs are diverse from all

Defendants. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 inasmuch as Defendants' actions violate federal public policy and therefore raise a substantial federal question.

14. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(a) inasmuch as Defendant CFNR resides within this judicial district and a substantial part of the events giving rise to the claim are occurring within this judicial district.

THE EXCULPATORY/INDEMNIFICATION PROVISIONS

15. Defendant CFNR is a common carrier railroad providing service to the general public pursuant to operating authority and operating authority exemptions granted under the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C, § 10101 et seq.). The railroad industry, including RailAmerica's 42 short line and regional railroad subsidiaries, is subject to government regulation because of the federally imposed entry barriers and the uncommon amount of market power possessed by railroads.

16. The railroad industry generally, and RailAmerica and CFNR in particular, are providing services that are essential to the economy and to the public interest. In this regard, CFNR is moving chlorine which is essential to the health and welfare of the nation and to its economic welfare.

17. On or about January 15, 2009, Defendant RailAmerica issued a new "General Tariff" which was to be adopted and was adopted by all 42 of the RailAmerica subsidiary railroads, including Defendant CFNR, effective March 1, 2009. The General Tariff provides in relevant part: "The shipper of any toxic inhalation or poison inhalation hazardous commodity shipped via the Subscribing Carrier shall indemnify the

Subscribing Carrier and hold the Subscribing Carrier harmless for any and all loss, liability or cost whatsoever that the Subscribing Carrier may incur or be held responsible for, to the extent that such liability is due to the shipper's transportation of such commodity, except to the extent that the Subscribing Carrier is grossly or willfully negligent."

18. Plaintiff Olin Corporation has entered into a transportation contract with the UP for the movement of chlorine, a TIH/PIH product, from its chlorine and sodium hydroxide production plant located at Henderson, Nevada, to its chlorine repackaging and sodium hypochlorite production facility located at Tracy, California. This transportation contract is pursuant to 49 U.S.C. § 10709, and is therefore, not subject to the jurisdiction of the Surface Transportation Board or any other federal agency.

19. Defendant CFNR is not a signatory to the contract between Olin and the UP. It does, however, contract and concur with the UP for delivery to the Olin Tracy, California plant. CFNR is the only rail access to the Tracy, California plant and fully controls all rail access to that location. The Tariff published by RailAmerica and adopted and applied by CFNR leaves no room for bargaining by Olin or any other shipper and is thus enforceable as a contract of adhesion. CFNR and RailAmerica claim that a shipper agrees to the terms of the unilateral and adhesive Liability and Indemnification Policy by shipping via the CFNR or any other RailAmerica subsidiary.

20. During calendar year 2008, Olin shipped rail tank cars of chlorine from Henderson, Nevada to Tracy, California. These tank car movements by Olin involved many thousands of tons of chlorine via the CFNR to Tracy, California. Olin has no choice but to ship its chlorine requirements via the CFNR. The movement of this amount

of chlorine via highway would require in excess of 1,200,000 highway miles of loaded and empty chlorine tank trucks on the interstate highway system. Such a prodigious amount of chlorine highway transportation is neither economically feasible nor prudent from a safety and security perspective. If the movements via the CFNR do not continue, Olin would be forced to shut down its Tracy, California plant and cease supplying water treatment chemicals to the Northern California area.

21. In view of the circumstances and the sole access to the Tracy plant by the CFNR, Olin is faced with the choice of either acceding to the adhesive provisions of the RailAmerica/CFNR Liability and Indemnification Policy, or ceasing operations at that location.

22. The result of the unilateral imposition of the RailAmerica/CFNR Liability and Indemnification Policy would, if allowed to continue, be to reduce the incentive of CFNR to operate in a safe manner by eliminating the financial penalty that it would otherwise face for its negligent conduct.

COUNT I

(Violation of California Public Policy)

23. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 22 as if they were fully set forth herein.

24. Defendants have unilaterally imposed an exculpatory provision upon any shipper, including Olin Corporation, as a condition of using the services of CFNR. Since Olin has no power to agree or disagree with the terms of this exculpatory clause, the clause is against public policy within the State of California and is an unenforceable contract of adhesion.

25. Defendants have unilaterally imposed an indemnification provision upon any shipper, including Olin Corporation, as a condition of using the services of CFNR. Since Olin has no power to agree or disagree with the terms of this indemnification provision, the provision is against public policy within the State of California and is an unenforceable contract of adhesion.

COUNT II

(Violation of Federal Public Policy)

26. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 22 as if they were fully set forth herein.

27. Federal public policy prohibits common carrier railroads from demanding exculpation or indemnification for their own negligence since such provisions eliminate the normal financial incentive for common carrier railroads to operate safely.

28. Federal public policy prohibits common carrier railroads from demanding exculpation or indemnification for their own negligence since such a prohibition protects those such as Olin from being overreached by those railroads that have the power to unilaterally impose their economic will.

COUNT III

(Irreparable Injury)

29. The actions of Defendants in imposing the exculpatory/indemnification provisions as a condition of moving its traffic cause Olin, and any other shipper similarly situated, in a position of suffering irreparable injury that can only be redressed by injunctive action of this Court.

WHEREFORE, Plaintiffs pray for relief as follows:

(1) That the Court issue a Declaratory Judgment declaring that the exculpatory/indemnification language of the RailAmerica Tariff as adopted and applied by California Northern Railroad is unlawful as against California and Federal public policy;

(2) That the Court enjoin RailAmerica and California Northern Railroad from publishing and enforcing the exculpatory/indemnification language contained in the RailAmerica Tariff as adopted and enforced by California Northern Railroad;

(3) That the Court enjoin RailAmerica and California Northern Railroad from taking any action in retaliation for the commencement and prosecution of this lawsuit; and

(3) For such further relief as the Court may deem just and proper.

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